IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Bail Appl..No. 5492 of 2007()

CRIME NO.207/04 OF THE THRISSUR EAST POLICE STATION

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: PETITIONER/1ST ACCUSED:

ROY SEBASTINE, S/O. DEVASSY,
AGED 38, PARAKKAL HOUSE, KARUR, KUZHIKATUSSERY P.O
THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
THRISSUR TOWN EAST POLICE STATION THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5492 of 2007

Dated this the 11th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused. He faces indictment in a prosecution under Sections 420 and 406 I.P.C. The petitioner had not appeared before the learned Magistrate at any earlier point of time. Cognizance has been taken. Consequent to non appearance of the petitioner, a warrant of arrest is pending against him.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful and was on account of reasons beyond his control. He is willing to surrender before the learned Magistrate and seek regular bail. In fact the disputes between him and the complainant have all been settled and the defacto complainant has compounded the offences allegedly committed by the petitioner. The petitioner wants to surrender before the learned Magistrate and apply for composition and bail. The petitioner apprehends that his application for regular bail and composition may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances, it is prayed that appropriate directions may be issued under Section 438 and/or 482 Cr.P.C in favour of the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C or the extraordinary inherent discretion under Section 482 Cr.P.C.

4. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

7. The petitioner can, of course, apply before the learned Magistrate for composition of the offences alleged against him. The prayer for composition must also be considered by the learned Magistrate on merits as expeditiously as possible.

(R.BASANT, JUDGE)

rtr/-